

Cause No. 10-05229

STATE OF TEXAS,
Plaintiff,

v.

RRPFG, Limited Partnership
d/b/a Randall Reed's Prestige
Ford Lincoln Mercury,
Defendant.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

160th JUDICIAL DISTRICT

FILED
2010 MAY -3 PM 8:58

**PLAINTIFF'S ORIGINAL PETITION FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the State of Texas, Plaintiff, acting by and through Attorney General Greg Abbott, and files this Plaintiff's Original Petition for Civil Penalties and Injunctive Relief against RRPFG, Limited Partnership, d/b/a Randall Reed's Prestige Ford Lincoln Mercury, and respectfully shows the following:

1. DISCOVERY CONTROL PLAN

1.1 Discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure Rule 190.

2. PLAINTIFF

2.1 This suit is brought in the name of the State of Texas by its Attorney General, Greg Abbott, and under the authority of the Constitution, statutes, and laws of the State of Texas.

3. DEFENDANT

3.1 RRPFG, Limited Partnership, d/b/a Randall Reed's Prestige Ford Lincoln Mercury, is a domestic limited partnership. RRPFG, LP may be served with process by serving its registered agent, Don Gould of Johnson DeLuca Kennedy & Kurisky, P.C. at 4 Houston Center, 1221 Lamar Street, Ste. 1000, Houston, Harris County, Texas 77010.

4. AUTHORITY

4.1 This action is brought by the Attorney General through his Consumer Protection & Public Health Division under the authority granted by section 17.47 of the Texas Deceptive Trade Practices—Consumer Protection Act (DTPA).

5. VENUE

5.1 Venue of this action lies in Dallas County pursuant to section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this cause of action occurred in Dallas County.

5.2 Venue of this action also lies in Dallas County pursuant to section 17.47(b) of the DTPA because transactions and events giving rise to this action occurred in Dallas County and/or because Defendant has done or is doing business in Dallas County.

6. PUBLIC INTEREST

6.1 By reason of the institution and operation of the unlawful practices set forth herein, Defendant has and will cause irreparable injury, loss and damage to the State of Texas and its citizens, and will also cause adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State.

7. ACTS OF AGENTS

7.1 Whenever in this petition it is alleged that Defendant did any act or thing, it is meant that Defendant performed or participated in such act or thing or that such act was performed by the officers, agents, or employees of Defendant and, in each instance, the officers, agents, or employees of Defendant that were then authorized to and did in fact act on behalf of Defendant or otherwise acted under the guidance and direction of Defendant.

8. TRADE AND COMMERCE

8.1 Defendant is engaged in “trade” and “commerce” as defined by section 17.45(6) of the DTPA as it operates a vehicle inspection station and new and used car dealerships. Tex. Bus. & Com. Code Ann. § 17.45(6).

9. CONDITIONS PRECEDENT

9.1 All conditions precedent to Plaintiff’s claim for relief had been performed or have occurred. The Consumer Protection and Public Health Division informed Defendant in general of the alleged unlawful conduct described below at least seven days before filing suit, as may be required by section 17.47 of the DTPA.

10. NATURE OF DEFENDANT’S CONDUCT

10.1 Defendant RRPFG owns and operates a vehicle inspection station at its vehicle dealership. The station is licensed by the Texas Department of Public Safety to perform vehicle inspections, including emissions testing. Defendant also sells used cars at its dealership and inspects used cars offered for sale.

10.2 As part of the emissions testing process, the inspector manually enters the motor vehicle’s vehicle identification number (VIN) into the testing equipment. The inspector also connects the testing equipment to the vehicle’s on-board diagnostic system (OBD) via the diagnostic link connector. The OBD system is installed in 1996 and newer vehicles by the manufacturer and monitors the performance of vehicle emissions control equipment, fuel metering system, and ignition system for the purpose of detecting malfunction or deterioration in performance that would be expected to cause the vehicle to not meet emissions standards. *See* 37 Tex. Admin. Code. § 23.93(b)(16). When the equipment is connected to the OBD, the analyzer checks and downloads stored information. The analyzer also reads the VIN programmed into the

vehicle's OBD.

10.3 Defendant uses an illegal technique known as "clean scanning" to obtain vehicle inspection certificates (or stickers) on vehicles not properly inspected. In clean scanning, an inspector tests one vehicle (the "clean" vehicle) and issues the passing inspection sticker to another. Defendant's inspectors manually enter the VIN of the vehicle they are purportedly inspecting but the "clean" vehicle is actually hooked up to the testing equipment. When the "clean" vehicle is connected, the "clean" vehicle's VIN is recorded by the testing equipment. The inspector then conducts the emissions inspection on the "clean" vehicle. After the "clean" vehicle passes the inspection, the inspector places the sticker on the vehicle that was not inspected.

10.4 Defendant advertises the uninspected vehicles for sale at Defendant's dealership. Defendant misrepresents the vehicles as being vehicles that have been inspected and have been issued an inspection certificate. In reality, the vehicles have not been inspected and have not been issued a passing inspection certificate. These vehicles may not meet the vehicle emissions standards in Texas and may have problems which will prevent the vehicles from being able to pass future inspections. These problems may also require costly repairs on behalf of the consumers who purchase the vehicles.

10.5 Since 2007, Defendant has conducted over 400 fraudulent inspections and issued inspection stickers to over 400 vehicles which were not inspected or had not passed an inspection.

11. DTPA VIOLATIONS

11.1 Defendant, in the course and conduct of trade and commerce, has directly and indirectly engaged in false, misleading, and deceptive acts and practices declared to be unlawful

by DTPA sections 17.46(a) and (b) by:

- A. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of vehicles, in violation of § 17.46(b)(2) of the DTPA;
- B. Causing confusion or misunderstanding as to affiliation, association, or certification of vehicles, in violation of § 17.46(b)(3) of the DTPA;
- C. Representing that vehicles and/or vehicle inspections stickers have sponsorship, approval, characteristics, uses, benefits, or quantities which they do not have, in violation of § 17.46(b)(5) of the DTPA;
- D. Representing that work or services have been performed on vehicles when the work or services were not performed, in violation of § 17.46(b)(22) of the DTPA; and
- E. Failing to disclose information concerning vehicles and/or vehicle inspections which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of § 17.46(b)(24) of the DTPA.

12. INJUNCTION

12.1 Because Defendant has engaged in the unlawful acts and practices described above, Defendant has violated and will continue to violate the law alleged in this petition. Unless the requested injunctive relief is granted, Defendant will continue to violate the laws of the State of Texas. The interests of the State of Texas require a permanent injunction to prohibit Defendant from engaging in false, misleading, and deceptive practices.

12.2 Section 17.47 of the DPTA authorizes the granting of a permanent injunction to restrain violations of the DTPA.

13. PRAYER

For these reasons, the State respectfully requests the following relief:

13.1 That after final hearing, a permanent injunction be issued restraining and enjoining Defendant, its successors, assigns, officers, agents, servants, employees and representatives from the following acts and practices:

- A. Transferring, concealing, destroying, or removing from the jurisdiction of this court any written or computer generated materials relating to the business of Defendant currently or hereafter in Defendant's possession, custody, or control, except in response to further orders or subpoenas in this court;
- B. Engaging in the "clean scanning" of vehicles;
- C. Selling or offering for sale any vehicle not properly inspected when Defendant represents, expressly or by implication, that such vehicle has been inspected and possesses a valid inspection sticker;
- D. Issuing an inspection sticker to a vehicle which has not been properly inspected;
- E. Representing, expressly or by implication, that a vehicle has been inspected when the vehicle has not been properly inspected;
- F. Representing, expressly or by implication, that a vehicle possesses a valid inspection sticker and/or inspection certificate, when the vehicle has not been issued a passing inspection certificate as a result of an inspection on that vehicle;
- G. Falsely representing, expressly or by implication, that a vehicle meets all Texas emissions standards;

- H. Using a vehicle for emissions inspections to issue passing inspection stickers to more than one vehicle;
- I. Using a vehicle for emissions inspections to issue a passing inspection sticker to a different vehicle;
- J. Falsely representing, expressly or by implication, that a vehicle is free from emissions-related defects or problems which would have been detected during a vehicle emissions inspection;
- K. Failing to disclose to consumers that a vehicle has not been inspected to determine whether the vehicle has emissions-related defects or problems which would have been detected during a vehicle emissions inspection; and
- L. Failing to disclose to consumers that a vehicle has not been issued a valid inspection sticker.

13.2 The State further asks that it recover civil penalties of up to \$20,000 for each violation of the DTPA, pursuant to section 17.47(c)(1) of the Texas Business and Commerce Code.

13.3 The State further asks for reasonable attorney's fees and costs as provided by the laws of the State of Texas, including but not limited to, section 402.006(c) of the Texas Government Code.

13.4 The State asks for such other relief to which it is justly entitled.

Respectfully submitted,

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